IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1915 of 2000

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATVERBHAI BHAYJIBHAI PATEL

Versus

STATE OF GUJARAT & Ors.

Appearance:

1. Special Civil Application No. 1915 of 2000

MR MB GOHIL for Mr. CJ VIN for Petitioner

MR LR PUJARI AGP for Respondents

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 18/10/2004

ORAL JUDGEMENT

The petitioner, a former Government servant,

challenges the order dated 3rd November, 1999 whereby the petitioner has been dismissed from service.

In Special Case No. 1 of 1992, the petitioner, then a Sales Tax Inspector was charged for offence punishable under Sections 13 (1)(e) & 13 (2) of the Prevention of Corruption Act, 1988. By the judgment and order dated 19th February, 1997 passed by the learned Special Judge, Bharuch, the petitioner has been convicted for offence punishable under the said Secs. 7 & 13 (1)(e) and 13 (2). For offence punishable under Secs. 7 & 13 (1) (e) of the Act, he has been sentenced to rigorous imprisonment for four years and to fine of Rs. 4,000/=. For the offence punishable under Sect. 13 (2) of the Act, the petitioner has been sentenced to suffer rigorous imprisonment for one year. Feeling aggrieved, the petitioner has preferred Appeal No. 172 of 1997 before this Court. The said appeal is pending for hearing and final disposal. Pending the said appeal, pursuant to his conviction, by the impugned order dated 6th November, 1990, the petitioner has been dismissed from service. Therefore, the present petition.

It is the grievance of the petitioner that the petitioner has not been paid subsistence allowance pending the appeal against conviction. Feeling aggrieved by the discontinuance of the subsistence allowance, the petitioner had preferred Special Civil Application No. 7641 of 1991. The impugned order came to be made pending the said petition. It is submitted that the impugned order is vitiated by mala fides and has been made without holding due inquiry. Pending appeal against conviction, the petitioner has been released on bail, no punishment could have been imposed upon the petitioner pursuant to his conviction. It is, however, admitted that the arrears of amount of difference of subsistence allowance was paid to the petitioner on 1st December, 1999. In that view of the matter, Special Civil Application No. 7641 of 1999 was dismissed on 4th December, 1999 as infructuous.

The petition is contested by the State Government. It is denied that the petitioner could not have been dismissed from service pursuant to his conviction.

The Full Bench of this Court has, in the matter of P.D Waghela & Ors. vs. G.C Raiger, Deputy IGP & Ors. [1994 (1) GLR 240], considered the very issue i.e. whether pending the appeal against conviction, punishment can be imposed upon the delinquent Government servant

pursuant to his conviction and sentence in a criminal case. The Hon'ble Judges have held that, "..The conviction spoken to in clause (a) of the second proviso to clause (2) of the Art. 311, to form a basis for the dismissal, removal or reduction in rank, could be one recorded by a competent Criminal Court in the first instance and the preferring of an appeal or revision against such conviction and the pendency of the same will not alter the position and action, taken on the basis of such conviction, need not conform to clause (2) of the Art. 311, since by the express terms of the second proviso thereto, clause (2) of Article 311 is dispensed with."

The impugned order of dismissal from service has been made in accordance with Rule 14 (1) (i) read with Rule 10 [as substituted by the Gujarat Civil Services [Discipline & Appeal] (Amendment) Rules, 1986].

In view of the above-referred judgment of the Full Bench of this Court, challenge to the impugned order is not tenable. The petition is accordingly dismissed. Rule is discharged with cost.

{Miss R.M Doshit, J.}

Prakash*